(2014) 09 CAL CK 0106

Calcutta High Court

Case No: C.R.A. 303 of 1985

Manindra Nath Baram		APPELLANT
	Vs	
The State of West Bengal		RESPONDENT

Date of Decision: Sept. 12, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(1), 251
- Essential Commodities Act, 1955 - Section 7(1)(a)(ii)

Hon'ble Judges: Shib Sadhan Sadhu, J

Bench: Single Bench

Advocate: S.L. Hazra and Mayukhi Mitra, Advocate for the Appellant; Ranabir Roy Chowdhury, Advocate for the Respondent

Final Decision: Allowed

Judgement

Shib Sadhan Sadhu, J.

This appeal has been directed against the judgment dated 07.08.1985 passed by the Judge, Special Court under the Essential Commodities Act, 1955 (henceforth "the Act"), Midnapore in D.E.B. G.R. Case No. 67 of 1983. By the impugned judgment, the appellant Manindra Nath Baram has been convicted u/s 7(1)(a)(ii) of the Act and sentenced to suffer Rigorous Imprisonment for 15 days and to pay a fine of Rs. 750/-, in default of payment of fine to further undergo simple imprisonment for 15 days.

2. The case of the prosecution, in brief, is as under:

On 09.10.1983 between 14.00 hours and 15.15 hours Sub-Inspector of Police Sankar Prasad Sen, D.E.O., Kharagpur under supervision of the superior Police Officers inspected the wholesale cum retail shop of the appellant under the name and style M/s. Radha Mohan Masala Bhandar at Gholai under P.S. Debra and found that the appellant was conducting business exposing mustard oil, refined rapeseed oil,

pulses, sugar etc. The stock cum-rate-board displayed the stock of the aforesaid essential commodities along with other articles as on 09.10.83. On demand, the appellant produced dealer''s licence, cash memo and stock books. The stock book in respect of the mustard oil and rapeseed oil disclosed only the opening stock as on 08.10.83. Physical verification of the actual stock disclosed excess quantity of mustard oil to the extent of 378 kgs and 900 gms. and excess of refined rapeseed oil to the extent of 188 kg in comparison with the rate-cum-stock-board. Hence the appellant violated the provisions of Section 3(2) of West Bengal Declaration of Stock and Price of Essential Commodities Order, 1977 and the provisions of Paragraph 12(C) of the West Bengal Pulses, Edible Oil seeds and Edible oils (Dealer''s licensing). Order, 1978. So the said Sub-Inspector seized the entire stock for mustard oil, refined rapeseed oil, licence, cash memo, stock books, stock-cum-rate-board under a seizure list duly attested by the witnesses and left those in the jimma of the appellant under a jimmanama. The appellant was arrested and thereafter they returned to Debra P.S. where the said Sub-Inspector Sankar Prasad Sen lodged a written complaint on the basis of which Debra P.S. Case No. 6 dated 09.10.83 u/s 7(1)(a)(ii) of the Act was registered. That case was investigated into by the complainant Sub-Inspector Sankar Prasad Sen and after completion of investigation, he submitted charge sheet u/s 7(1)(a)(ii) of the Act against the appellant.

3. Thereafter, the case was placed for trial before the Learned Judge, Special Court (E.C. Act) Midnapore, who examined the accused/appellant u/s 251 of the Code of Criminal Procedure and after conclusion of the trial, held the appellant guilty and convicted and sentenced him as mentioned above.

4. Prosecution examined 4 witnesses in order to prove the accusation brought against the appellant. The documents admitted into evidence on behalf of the prosecution e.g. seizure list; formal F.I.R.; Jimmanama and the written complaint have been marked Exts. 1, 2, 3 & 4 respectively and the signatures of the witnesses appearing on those documents were marked accordingly. On the other hand, the appellant did not adduce any evidence.

5. Learned Advocate appearing on behalf of the appellant submitted that in view of the fact that 09.10.83 was Sunday and a closure day writing up of the board on 09.10.83 was not necessary and there is nothing in the complaint to show that at the time of seizure, the shop was open and business had been transacted from the shop. He further contended that physical weighment was not at all done and the seizure was not made in accordance with law. Also the independent witnesses namely P.W. 1 Haripada Chakraborty and P.W. 2 Bishnupada Pal did not witness the seizure at all and they were kept outside. Therefore, according to him, the alleged seizure was wholly illegal.

He, therefore, emphatically contended that the prosecution has miserably failed to bring home the accusation brought against the appellant and the impugned order of conviction and sentence being bad in law and against the weight of evidence on

record cannot be sustained and is liable to be set aside and the appellant is entitled to an order of acquittal.

6. Learned Counsel appearing on behalf of the State on the other hand supported the impugned judgment and order of conviction. According to him, the contentions raised by his learned adversary have no force in view of the fact that there is no denial that P.W. 4 S.I. S.P. Sen visited the shop of the appellant and found discrepancies in the stock of Essential Commodities and registers etc in presence of the accused and witnesses. He further contended that even if in the complaint evidence is not mentioned and if the evidence is given regarding the fact, it would be proved that the appellant was engaged in commercial business on that date. Therefore, the appellant has no escape for the offence committed by him and the Learned Trial Court has rightly convicted him u/s 7(1)(a)(ii) of the Act and passed the appropriate sentence, which should be maintained. He finally insisted upon dismissal of the appeal.

7. I have gone through the impugned judgment and the entire records and proceedings in the context of the rival submissions made by the Learned Counsels for the parties. I have also meticulously scrutinized the evidence adduced by the prosecution-both oral as well as documentary.

8. Coming to the prosecution evidence I find that P.W. 4 S.I. S.P. Sen is the main star witness. He deposed that on 09.10.83 at about 2 p.m. he along with D.S.P., D.E.B. Samar Chatterjee and Ajit Chatterjee D.E.O.-II raided the shop of the appellant which was open and the appellant was conducting business displaying stock and rate board dated 09.10.83. In the stock-cum-rate-board, stock of mustard oil was shown as 11 quintals 75 Kgs. and 100 gms. and refined rapeseed oil was shown as 82 kgs. 500 gms. Stock book was found written up to 08.10.83 showing opening balance of 11 quintals 68 kgs 500 gms of mustard oil and 82 kgs of refined rapeseed oil. The entries of 08.10.83 was only the opening stock and no closing stock was entered. He seized the rate-cum-stock-board dated 09.10.83. He verified the stock of mustard oil and rapeseed oil in presence of witnesses and found 97 sealed tins of mustard oil, each tin containing 16 kgs, 18 tins of rapeseed of rapeseed oil, out of which 8 were sealed and 10 tins were opened each containing 15 kgs. So he found excess of mustard oil by 378.900 kgs and refined rapeseed oil by 188 kgs but as per stock-cum-rate-board displayed on 09.10.83.

He further deposed that he arrested the accused, took him to Debra P.S. and filed a written complaint. Thereafter, under the orders of D.S.P., D.E.B. he started investigation, examined witnesses and after completion of investigation he submitted charge sheet.

It is his further evidence that the entries made in the board were made in chalk and the entries regarding opening stock of the Essential Commodities appeared to have been blurred.

9. In cross-examination P.W. 4 stated that 9th October, 1983 was a Sunday. He expressed ignorance whether Sunday was weekly closing day of the appellant''s shop. He further stated that he did not cite as witness any customer with whom the appellant was conducting business nor did he ascertain the names, addresses and particulars of those customers. He admitted that he did not weigh the rapeseed oil and the mustard oil to ascertain the exact quantity of the same. He also did not take measurement of other grocery articles found in the shop nor did he prepare any list with regard to such articles. He admitted further that he had no paper to show that the D.S.P., D.E.B. endorsed the case to him for investigation. He admitted yet further that he did not serve any notice upon the appellant before search and seizure of the stock-cum-rate-board. He denied the suggestion that he brought the appellant when he was taking bath and wearing underwear and he forced him to open the shop which was under lock and key at that time and that the appellant did not make any transaction on that day which was Sunday.

10. P.W. 1 Haripada Chakraborty is a local resident and alleged witness of seizure. He deposed that on 09.10.1983 at about 2/2.30 p.m. he and many other persons including P.W. 2 went to the shop of the appellant seeing the police officers. They were outside the grocery shop. They did not see what the police officer did inside the shop. After sometime the police officers called them and told them that on search they found excess stock of mustard oil and rapeseed oil and requested them to become witness to the seizure list and they signed the same. They did not see the police officer giving any copy of the seizure list to the appellant.

In cross-examination P.W. 1 stated that he was not examined by the I.O. He further stated that the police officer did not measure the quantity of the stock of mustard oil and rapeseed oil in their presence. He further disclosed that on every Sunday the shop of the appellant remained closed.

11. P.W. 2 Bishnupada Pal is another local resident and alleged witness of seizure. He corroborated P.W. 1 fully. In cross-examination, he stated that he was never examined by the police officer after the occurrence. The police officer did not allow him and other members of the public to enter inside the shop room when they were working inside. The police officer did not tell them the exact quantity of excess mustard oil and rapeseed oil which was found on search in the shop with reference to relevant ''Khatapatras''. He disclosed further that the shop room of the appellant remains full closed on Sunday and half day closed on Saturday and that the appellant represented such facts before the police officer.

12. Thus looking into the evidence on the point of search and seizure, it is seen that P.W. 4 has admitted that he did not weigh the rapeseed oil and the mustard oil to ascertain the exact quantity of the same and that he also did not take any measurement of other grocery articles nor did he prepare any list of such articles. P.W. 1 and P.W. 2 who are the alleged witnesses to seizure also stated that the police officer did not measure the quantity of the stock of mustard oil and rapeseed

oil in their presence. Not only that, they were not even allowed to enter inside the shop and they were made to sign the seizure list afterwards. Thus, from these accounts of P.W. 4, P.W. 1 and P.W. 2, it becomes clearly established that no actual or physical weighment or measurement of the commodities was made and it was a guess work. That being so, the genuineness of the prosecution case becomes highly doubtful.

13. It is not disputed that 09.10.1983 was a Sunday and that day was chosen as a closure day by the appellant under the Shop and Establishment Act. Therefore, it cannot be said that he was transacting any business. Also there is no evidence on record worth the name, that the appellant was engaged in the business of selling any of the commodities to any customer. On the contrary, it can be gathered from the evidence of P.W. 4 that he did not cite any customer with whom the appellant was conducting business nor did he ascertain the names, addresses and particulars of such customers. Therefore, it was not necessary for the appellant to write up the stock board and the said board displayed the stock of the previous day. As such the appellant cannot be said to have committed any offence.

14. Admittedly the entries in the stock-cum-rate-board has become wholly blurred and the copy of that rate-cum-stock-board has not been brought on record. Also P.W. 1 and P.W. 2, the independent public witnesses did not lend any support to the prosecution on that score. So the allegation of violation of Para 3(2) of the West Bengal Declaration of Stock and Prices of Essential Commodities Order, 1977 remains unsubstantiated. It is surprising to note that the Learned Trial Court has made such observations in the impugned judgment and held that in the circumstances it cannot be said that the prosecution succeeded in proving that there was any discrepancy between actual physical stock of mustard oil and refined rapeseed oil vis-a-vis the figures relating to those items displayed in the rate-cum-stock-board, but still held the appellant guilty. Be that as it may, the non-production of the seized rate-cum-stock-board being coupled with the factum of non-weighment of the commodities and non-issuance of any notice before search and seizure makes the prosecution case vulnerable.

15. It is needless to mention that investigation should not ordinarily be undertaken by an officer who is the complainant. This is not in consonance with fair play and is against the principles of natural justice. Where the prosecutor is the person entrusted with the collection of evidence, he will certainly proceed with a biased mind and this may prejudice the accused person, against whom charge sheet is ultimately submitted.

16. In the instant case, Sub-Inspector Sankar Prasad Sen filed the complaint in Debra P.S. and he himself undertook the investigation without any specific order of the Officer-in-Charge of the said police station. Such investigation was, therefore, illegal as being in violation of the mandatory provision of Section 156(1) of the Code of Criminal Procedure (vide 79 CWN 107-Rasiklal Bhansali V. State of West Bengal.)

17. In this context I think it appropriate to refer to the decision of the Hon''ble Supreme Court reported in Bhagwan Singh Vs. The State of Rajasthan, wherein Their Lordships held that where the informant or the complainant conducted the investigation himself, it is an infirmity which is bound to reflect on the credibility of the prosecution case.

18. After visualising the prosecution evidence on record on anvil of law of appreciation of evidence and cardinal principle of criminal jurisprudence, I am unable to concur with the judgment of conviction passed by the Learned Trial Court on the strength of fabricated story and on tainted investigation. As such I allow this appeal and set aside the conviction and sentence of the appellant and acquit him of all the charges. He shall be discharged from his bail bonds and be set at liberty forthwith.

19. Let the Lower Court Records be sent down to the Court below at once along with a copy of this judgment.

20. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the party, if applied for, as early as possible.